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Ann O. Berkowitz
Project **Manager** – Federal **Affairs**

1300 I Street, NW
Suite 400 West
Washington, DC 20005
(202) 515-2539
(202) 336-7922 (fax)

February 11, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Application by Verizon Maryland, Verizon Washington, DC and Verizon West Virginia for Authorization To Provide In-ReZion. InterLATA Services in States of Maryland, Washinnton, DC and West Virginia, WC Docket No. 02-384 - REDACTED

Dear Ms. Dortch:

At the request of staff, Venzon provides this additional information relating to directory assistance.

Staff asks whether Verizon permits its national directory assistance offering to be resold by resellers at a wholesale discount. The answer is yes. A copy of Verizon's tariff for national directory assistance is contained in Attachment 1. As indicated in the tariff, the retail rate for national directory assistance is \$1.25 per call. Verizon's retail national directory assistance service is available to resellers at a wholesale discount. In other words, Venzon applies the 19.87 percent discount to the \$1.25 for resold national directory assistance calls.

Staff also asked a number of questions relating to the free call allowance. The Maryland PSC required Verizon to provide six free residential directory assistance calls in 1993. (Before that, the free call allowance was larger.) Consistent with PUC § 8-202 of the Maryland Public Utility Companies Article, a copy of which is contained in Attachment 2, the **free** call allowance is available to Maryland retail residential customers on all calls requesting in-state directory listings. Requests for listings outside of Maryland are not included in the free call allowance.

Next, staff asked Verizon to provide the source data it relied on to support its average of two retail residential directory assistance calls a month, which Venzon referenced in its February 4, 2003 ex parte. Historically, Verizon's operator services and product line management experts have concluded that residential customers have used on average two directory assistance calls per month, and Venzon has used the assumption of an average of two retail residential directory assistance calls per month in its long range planning for the engineering and capacity needs of directory services.

REDACTED – FOR PUBLIC INSPECTION

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To confirm the continued viability of this historical assessment in connection with its February 4 ex parte, Verizon analyzed directory assistance data from November 2001 through November 2002. Attachment 3 provides the source data and calculations Verizon used to arrive at the two call average. First, Verizon obtained the total number of retail directory assistance calls from metric OD-I-02-1021 of the Carrier-to-Carrier reports. Since this measure includes both residential and business calls, Verizon subtracted the total number of retail business directory assistance calls from the total number of all directory assistance calls, to arrive at the total number of retail residential calls. (This information comes from a database that tracks billed directory assistance calls and could not be used to provide total residential calls because it does not track the free directory assistance calls.) Verizon then divided the total number of retail residential calls by the total number of residential access lines in service each month between November 2001 and November 2002 to arrive at the number of directory assistance calls per month, **per** line on retail residential access lines. This number is ********* directory assistance calls per month, or approximately two calls per month.

Verizon notes that, due to a data error, the number of retail business directory assistance calls shown in Attachment 3 for the months of May, June and July of 2002 was substantially lower than the number of retail business directory assistance calls in other months. This was caused by a software error that resulted in a failure to feed all of the relevant source data into Verizon's database. This means that the calculation in Attachment 3 slightly overstates the number of retail residential directory assistance calls per month. Verizon also calculated the average number of retail residential directory assistance calls per month assuming that the number of business calls a month in May, June and July 2002 was the average of the other 10 months from the November 2001 to November 2002 study period. This calculation is shown in **the** bottom half of Attachment 3. The resulting number of total retail residential directory assistance calls **per** month is ********* calls.

Staff also **asks** Verizon to place information in the record regarding the maximum number of directory assistance inquiries allowed in Maryland. Maryland does not have a ceiling on the number of directory assistance calls that customers can make or that carriers can provide. (As stated above, retail residential customers in Maryland are allowed six free directory assistance calls.)

Staff also asks about the calculation of the wholesale discount as it relates to directory assistance. To aid the calculation of the wholesale discount, Verizon provided the PSC and the other parties in the Maryland cost proceeding with the expenses assigned to each of the FCC's prescribed expense accounts for 1995, including the "Numbered Services Account." This account includes the costs attributable to directory assistance. (The only other costs in this account relate to white page listings.) The expenses associated with directory assistance calls consists entirely of Verizon's labor costs, and, as a result, the directory assistance expenses constitute the wages for directory assistance operators.

In addition, as we explained previously, the Maryland PSC adopted a 19.87 percent discount based on a proposal from the staff. (The PSC staff had proposed two discounts: 19.87 percent for resellers who provided their own directory assistance, and 16.63 percent for resellers who used Verizon's directory assistance.) The PSC staff, in turn, had adopted AT&T's proposal for

the percentage of expenses in the Numbered Services Account that would be avoided for resellers providing their own directory assistance service. The relevant pages of the staff report are included in Attachment 4. See Final Comments of the Staff of the Public Service Commission of Maryland, *In the Matter of the Petitions for Before the Approval of Agreements and Arbitration of Unresolved Issues Arising Under § 252 of the Telecommunications Act*, Case No. 8731, October 22, 1996 at 29. AT&T assumed that all the costs associated with directory assistance would be avoided if a reseller provided its own directory assistance. See AT&T's October 22, 1996 Brief at 18, *Application of AT&T Communications of Maryland, Inc. In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Case No. 8731 ("number services are presumed to be 100% avoided for resellers that will be supplying their own directory services (like AT&T), except for those portions related to providing white pages (a service which will continue to be utilized by all resellers.)"). The relevant pages from AT&T's brief are included as Attachment 5

Consequently, the 19.87 percent discount assumes that *all* of the wages for directory assistance operators (which handle all directory assistance calls – free or chargeable) are avoided. Because the directory assistance expenses consists entirely of the actual wages for directory assistance operators in 1995, the directory assistance avoided costs are based on the actual number of directory assistance calls that Verizon's operators handled in 1995. This means that the actual costs included the costs, on average, for all customers' use of directory assistance.

Finally, the staff asks one question unrelated to directory assistance in Maryland. In particular, staff wants to know which states in the former Bell Atlantic region have a tariffed rate for the "per dip" pre-order directory listing inquiries. Connecticut and New York are the only states that have this charge in a tariff. See Attachment 6. However, Verizon does not currently charge this rate in any state in the former Bell Atlantic region.

This ex parte contains proprietary information and has been redacted. A confidential version is also being filed. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 02-3511.

Sincerely,



Attachments

cc: G. Cohen
G. Gooke
G. Remondino
V. Schlesinger
J. Dygert

ATTACHMENT 1

GENERAL SERVICES TARIFF
P.S.C.-Md.-No. 203

Verizon Maryland Inc.

Section 9A
Original page 1

NATIONAL 411 SERVICE

A. GENERAL

National 411 (N411) Service provides customers with the listings of individuals or businesses located outside the customer's local exchange area or NPA, but within the United States. Requests for listings that are within the local exchange area or NPA are provided and billed pursuant to Section 9 of this Company's General Services Tariff.

3. REGULATIONS

1. N411 Service is subject to the availability of facilities
2. The rate specified in C. following will apply for all N411 requests, including requests for listings that are non-published, non-listed or not found.
3. A maximum of two requests for listings will be allowed per call: no discounts will apply on charges for N411 Service.
4. Call allowances for N411 Service are as specified in Section 9 of this Tariff.
5. Charges for N411 Service are not applicable to calls from telephones where the customer or, in the case of residence service, where the customer or a member of the customer's household has been affirmed as being unable to use a directory because of a visual or physical disability, pursuant to Section 9 of this Company's General Services Tariff.
6. Verizon Maryland shall not be liable for any errors or omissions, whether arising through negligence or otherwise, in the information furnished, and the customer shall save Verizon Maryland harmless against all claims that may arise from the use of such information.
7. Alternate billing arrangements are not permitted with N411 Service
8. N411 Service will not be offered from the following services:
 - Dormitory Centrex
 - Hospital Patient Lines
 - Hotel/Motel Guest Lines
 - Pay Telephone Lines
 - Mobile Type 1 Service
9. If a customer requests both an N411 and local listing on the *same* call, the customer will be charged the rate for a N411 listing, as specified in C. following.
10. N411 Service is not available to restricted lines where alternate billing arrangements must be made.

GENERAL SERVICES TARIFF
P.S.C.-Md.-No. 203

Verizon Maryland Inc

Section 9A
1st Revised Page 2
Cancels Original Page 2

NATIONAL 411 SERVICE

C. RATES

1. Application of Rates

For calls placed through a Verizon operator, the Operator-assisted Local Call charge, specified in Section 20 of this Tariff, applies in addition to the charge for N411 Service calls, specified below. When the services of a verizon operator are used, the Operator-assisted Local Call charge will not apply in the following cases:

- a. To reach the called N411 Service number when attempts by the customer to direct dial such a call cannot be completed.
- b. To only record the originating telephone number where no automatic recording equipment is available.

2. Rates and Charges

National **411** service, per call \$ 1.25 (I)

ATTACHMENT 2

Effect of amendments. — Chapter 34, Acts of the subtitle heading preceding this, § 8-202, 1999, approved Apr. 13, 1999, and effective without change to validate previously made from date of enactment, reenacted (a)(1) and technical corrections.

§ 8-202. Charges for directory assistance.

(a) *No separate charge — First two calls.* — (1) *The Commission may* not authorize telephone company charges to be levied for directory assistance calls made by residential customers on the first two calls **made** to directory assistance from **each** residential service per monthly billing cycle.

(2) **The Commission** may authorize charges on other directory **assistance** calls if the **Commission** finds, after notice and evidentiary hearing, that the charges:

- (i) protect **consumers** by providing affordable and reasonably priced directory assistance **service**;
- (ii) encourage the development of competition; and
- (iii) **are** in the public interest.

(b) *Same — Calls by disabled individuals.* — The Commission **may** not authorize telephone company charges to be levied for directory assistance on an individual who suffers **from** a physical or visual disability that precludes the use of a telephone directory.

PUC, § 8-203**PUBLIC UTILITY COMPANIES ARTICLE**

(c) *Other exemptions.* — The Commission may provide other exemptions from telephone company charges to be levied for directory assistance if the exemptions are just and reasonable. (An. Code 1957, art. 78, § 68(b); 1998, ch. 8, § 2.)

REVISORS NOTE

This section formerly was Art. 78, § 68(b).
In subsection (b) of this section, the term "disability" is substituted for the former term "handicap", for consistency with similar provisions in other revised articles of the Code.

Also in subsection (b) of this section, the reference to an "individual" is substituted for the former reference to a "person" because only an "individual", and not other types of entities included in the defined term "person", can suffer a "physical or visual [disability] that precludes the use of a telephone directory".

The only other changes are in style.

As to former Art. 78, § 68(a) regarding the power of the Commission to determine rates of public service companies, see Title 4 of this article,

Defined terms:

"Commission" § 1-101
"Telephone company" § 1-101

§ 8-203. Local measured rates.

(a) *Mandatory charges prohibited.* — (1) The Commission may not authorize mandatory telephone company charges based on a measured time period unit rate for local messages.

(2) The Commission may study or evaluate mandatory telephone company charges.

(b) *Conditions for approving charges.* — If the Commission authorizes a telephone company to offer to residential customers the option of telephone charges based on a measured time period unit rate for local messages, the Commission also shall require the telephone company to offer to residential customers:

- (1) the option of an unlimited number and duration of local calls; and
- (2) the option of a specific charge per local call, regardless of the duration of the local call.

(c) *Order processing or line change charges — Limitation.* — A telephone company may not require the payment of an order processing charge or line change charge for a residential customer's first change from local telephone service based on charges for measured time period unit rates, if the change occurs within 18 months after the date that the consumer elects this telephone service.

(d) *Charge for distance of local call prohibited.* — The Commission may not authorize a telephone company to charge for the distance of a call within a local calling area. (An. Code 1957, art. 78, § 68(c)(1)-(3), (5), (6); 1998, ch. 8, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 78, § 68(c)(1), (2), (3), (5), and (6).
Former Art. 78, § 68(c)(4), which prohibited

certain charges on a residential customer's change of service until December 1, 1965, is deleted as obsolete.

The only other changes are in style.

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§ 8-20

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ATTACHMENT 4

(410) 767-8008

October 22, 1996

Daniel P. Gahagan,
Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street - 16th Fl.
Baltimore, MD 21202-6806

Re: Case No. 8731

Dear Mr. Gahagan:

Enclosed for filing in Case No. 8731 is the original and fourteen copies of the public version of the Final Comments of the Staff of the Public Service Commission of Maryland in the above-captioned matter.

Copies have been delivered to parties of record.

Please call if you have any questions.

Very truly yours,

Janice M. Flynn
Assistant Staff Counsel

cc: Parties of Record (w/attach.)

JMF\mc1\8731comm.doc

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE PETITIONS
FOR BEFORE THE APPROVAL OF
AGREEMENTS AND ARBITRATION OF
UNRESOLVED ISSUES ARISING UNDER
§252 OF THE TELECOMMUNICATIONS
ACT OF 1996.

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CASE NO. 8731

Final Comments

of the Staff of the

Public Service Commission of Maryland

Andrew S. Katz
Janice **M.** Flynn
Chana S. Wilkerson
Public Service Commission
of Maryland
6 St. Paul Center
Baltimore, MD 21202-6806
(410) 767-8008

October 22, 1996

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franchise fee. For this reason, competitors are disadvantaged because it costs the competitors more to lay fiber than it costs BA-MD. One could argue that dark fiber should be made available to competitors to obtain competitive neutrality and to alleviate the burden on municipalities. From the public's standpoint, the fewer times that street is dug up, the better since any digging will disrupt the local infrastructure.

Staff believes that dark fiber should be available for resale. Staff recommends, however, that the Commission consider specific requests for dark fiber *on a case by case basis*. When a specific request is brought to the Commission, the Commission should consider the appropriate restrictions and how to determine the rate.⁴⁴

With regard to BA-MD's procedural objection that this issue was not properly raised in arbitration, Staff believes that because all parties interested in the issue have addressed it substantively and having heard extensive oral argument, the Commission should consider the issue now rather than re-hear the issue in a separate case.⁴⁵

VIII. WHOLESALE RATES

In this section, Staff has four objectives, Staff will summarize the basis of the 20.78 percent wholesale discount rate recommended in its reply comments. Staff will explain its revisions made to AT&T's avoided cost model - Staff Exhibit 1. Staff will offer the Commission a new rate if the Commission decides, in light of the stay, it will

⁴⁴ T. at 495.

⁴⁵ T. at 493-94

not use any of the wholesale discount rates present in this proceeding. Finally, Staff will answer various questions posed by the Commission during the proceeding.

The 1996 Telecommunications Act requires ILECs to offer their retail services to competitive local exchange carriers at discounted wholesale rates.⁴⁶ The Act further requires that wholesale rates be determined on the basis of avoided costs.⁴⁷ Staff in deriving its wholesale discount rate, used the criteria set out in the FCC Order for state commissions to determine avoided costs and calculate a wholesale discount rate.⁴⁸ As indicated by Staff Witness Dean, Staff was a "FCC fundamentalist", strictly adhering to the proscribed guidelines.⁴⁹ In particular, there were no deviations from the avoided percentages avoided set out by the FCC to be applied to accounts 6611, 6612, 6613, 6621, 6622, and 6623⁵⁰. Based on this methodology, Staff calculated 20.78 percent as the wholesale discount which should be received by resellers.⁵¹

A. Staffs Modifications To AT&T's Avoided Costs

After reviewing the reply comments and avoided costs model of AT&T and BA-MD, Staff Witness Ann Dean using the AT&T model as the starting point, calculated a wholesale rate. Witness Dean's modifications were based on some of the suggestions made by BA-MD in its reply comments.

Most of AT&T's percentages were used for the avoided direct expense accounts. However, for product advertising, AT&T used 100 percent and in the FCC's order the proxy was 90 percent. Therefore, 90 percent was used in the calculation for Account

⁴⁶ 47 U.S.C., §252(d)(3).

⁴⁷ Id.

⁴⁸ FCC Interconnection Order, at ¶ 863-984.

⁴⁹ T. at 611.

⁵⁰ See Reply Comments of Ann Dean. Attachment C.

⁵¹ Id.

6613. In addition, AT&T included some "additional" direct expenses which BA-MD said should not be included.⁵² Staff eliminated Accounts 6220, 6533, 6534, 6560 from AT&T's avoided direct expense calculation.

In calculating the indirect factor, AT&T used a method different from Staff and BA-MD. Staff added all the avoided direct expenses⁵³ and divided that number by BA-MD's total regulated costs⁵⁴ to derive the 14.77 percent allocator for indirect expenses. Accounts 5301, 6120, 6710, and 6720 were used both by Bell Atlantic and by AT&T for the avoided indirect expenses. Staff applied the allocator to these accounts. Staff then removed the figure for the Return on Avoided Operator Systems and General Support Assets. This was consistent with the accounts Staff removed from avoided direct expenses. Staff retained AT&T's depreciation and amortization expense for general support assets - Account 6560 and again used the allocation factor of 14.77 percent. Using the avoided costs proffered by AT&T with Staff's abovementioned modifications Staff determined the total avoided indirect expense. Then using AT&T's figures for new costs and revenues Staff came up with a 20.48 percent wholesale discount.⁵⁵

Staff performed this analysis to show that the number Staff derived in its comments was reasonable. Although this is not Staff's proposal, Staff would not be

⁵² See, BA-MD Reply Comments, at pp.7-9.

⁵³ See, Staff Exhibit 1.

⁵⁴ See, BA-MD Reply Comments, Exhibit C, Attachment 2 (Revised 10/01/96).

⁵⁵ The 20.48% discount uses 100% as the percent avoided. Later in the proceeding, AT&T revised the percent avoided to 72%. If the 72% avoided figure is used, the wholesale discount would be 20.27%. Staff Witness Ann Dean

opposed to the Commission adopting the wholesale discount derived from Staffs modifications to the AT&T avoided cost model.⁵⁶

B. Staffs Alternative Proposal In Light of the Stay of FCC Rules 51.601-51.611

Under the authority granted to it in §252(b)(4)(C) of the Telecommunications Act of 1996, the Commission can choose to adopt any of the wholesale discounts proffered by the parties in this proceeding. In light of the stay and pending court decision on the merits, the Commission may not feel comfortable adopting any of the discounts because they are **all** based in whole or in part on the guidelines in FCC Rules 51.601-51.611

In the event the Commission determines that it will not use any of the wholesale rates proffered in this proceeding because of the stay of FCC Rules 51.601-51.611, Staff has independently calculated a new wholesale discount. Staff uses an avoided cost model and avoids costs attributable to marketing, billing, collection and other costs that will be avoided as proscribed in §251(c)(4) and §252(d)(3) respectively, of the Act. The new calculation does not rely on the percentages and guidelines established in the FCC Order.

Since the guidelines in the FCC Order were not used, Staff derived two wholesale discount rates. One rate is for resellers who will use BA-MD's operator and directory assistance services and one rate is for resellers who will not use BA-MD's operator and directory assistance services. (See Attachments C and D).

The following is a description of Staffs calculations. Staff examined AT&T Exhibit 4, showing the differences between AT&T and BA-MD on the percentages of

⁵⁶ See, Staff Exhibit 1.

costs which will be avoided. BA-MD and AT&T agreed that the percent avoided for Sales (Account 6612) is 100 percent. Staff concurred and used this as the figure for Sales. Staff reclassified Uncollectibles (Account 5301) as a direct expense and concurred with AT&T that 90 percent of uncollectibles are avoidable. In Advertising (Account 6613), AT&T believes that 100 percent is avoidable and BA-MD believes that 0 percent is avoidable. Staff selected 50 percent as the avoidable amount. For Product Management (Account 6611) and Customer Services (Account 6623), Staff selected 42.5 percent and 84 percent respectively as the percentages avoided. These percentages were averages of BA-MD's and AT&T's proposals. For resellers providing their own operator and directory assistance services, Staff agreed with AT&T that Call Completion (Account 6621) and Numbered Services (Account 6622) percentages avoided are 72 percent and 68 percent respectively. Staff was not persuaded by BA-MD's arguments that portions of Call Completion and Number Services accounts should be excluded from the analysis. Staff was also not persuaded by AT&T that Operator System (Account 6220), Operations Testing (Account 6533), Operations Plant Administration (Account 6534) and Depreciation Associated with Operator Systems (Account 6560) are direct costs that are avoided in compliance with the Act.

For indirect costs avoided, Staff used 16.57 percent as the fixed allocator. Staff averaged BA-MD's 11.04 percent and AT&T's 22.1 percent allocation factors to derive its allocator. Staff then applied the fixed allocation factor to General Support Expenses (Account 6121-6124), Executive and Planning Expenses (Account 6710) and General and Administration Expenses (Account 6720). Staff subtracted new costs from the total avoided costs. The new costs were the average of BA-MD's and AT&T's new cost

estimates. Staff divided the total avoided costs minus new costs by AT&T revenue figures. AT&T's revenue figures were used instead of BA-MD's revenue figures because Staff did not accept BA-MD's exclusion of operator and directory assistance revenue from total revenue.

Based on the above calculations, Staff recommends the Commission use 16.63 percent as the wholesale discount for resellers not providing their own operator and directory assistance services and 19.87 percent as the wholesale discount for resellers providing their own operator and directory assistance services.

C. Staffs Responses to the Commission's Questions

1. At page 621 of the transcript, in reference to Staffs Modification of AT&T's Avoided Costs calculation, the Commission ask whether Staff in its calculation excluded or avoided the costs. Subject to check, Staff indicated the costs were excluded. Upon review however, Staff avoided the costs.

2. At page 622 of the transcript, the Commission asked Staff to calculate a wholesale discount without avoiding accounts 6621 and 6622. Staffs recalculation of its wholesale discount with accounts 6621 and 6622 not avoided would yield a discount rate of 15.58 percent. (See Attachment E)

3. At page 617 of the transcript, the Commission inquired as to the difference between total company data and Maryland specific data in calculating a wholesale rate. In the short period of time, Staff did not have sufficient data to calculate a wholesale discount rate using separated intrastate data.

IX. INTERIM LOCAL NUMBER PORTABILITY

ATTACHMENT 5

**BEFORE THE
MARYLAND PUBLIC UTILITY COMMISSION**

**APPLICATION OF AT&T COMMUNICATIONS
OF MARYLAND, INC.**

Case No. 8731

**In the Matter of the Petitions for Approval
of Agreements and Arbitration
of Unresolved Issues Arising Under Section 252
of the Telecommunications Act of 1996**

**POSITIONS ON ISSUES OF
AT&T COMMUNICATIONS OF MARYLAND, INC.**

John J. Langhauser
Mark A. Keffer
Karlyn D. Stanley
3033 Chain Bridge Road
Oakton, VA 22185
(703) 691-6047

Matthew W. Nayden
Stephanie A. Baldanzi
Ober, Kaler, Grimes & Shriver
120 East Baltimore Street
Baltimore, Maryland 21202
(410) 685-1120

October 22, 1996

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**BEFORE THE
MARYLAND PUBLIC UTILITY COMMISSION**

**APPLICATION OF AT&T COMMUNICATIONS
OF MARYLAND, INC.**

Case No. 8731

**In the Matter of the Petitions for Approval
of Agreements and Arbitration
of Unresolved Issues Arising Under Section 252
of the Telecommunications Act of 1996**

**POSITIONS ON ISSUES OF
AT&T COMMUNICATIONS OF MARYLAND, INC.**

The fundamental issue in this case is which version of local exchange competition will prevail in Maryland. Will it be the one advanced by Bell Atlantic-Maryland ("BA-MD") that would establish interim rates for unbundled elements and wholesale services that would help insulate the incumbent local exchange carrier from competition? Or will it be the vision embodied in this Commission's Orders in Case 8584 and the Telecommunications Act of 1996 (the "Act") intended to bring real competitive choice, and its attendant benefits, to Maryland consumers in the local exchange marketplace?

Unless the Commission gets these issues right, local exchange competition may not mean much to the typical Maryland consumer. The problems with setting unbundled element rates too high are already beginning to surface. Recently MFS filed its local tariff for residential customers, offering only a high priced service laden with nearly every available end-user feature offered in the market. Although only MFS knows for certain why it proposed the rates it did, AT&T's observation is that, because of the existing high rates MFS must pay for unbundled loops and because of the high non-recurring charges MFS agreed to pay BA-MD, MFS's cost structure does not permit it to offer a lower priced option that "average" customers would find attractive. Already MFS is under attack for "cream skimming" the high-revenue customers.¹ If this Commission

¹ In re: Application of MFS Intelenet of Maryland to Provide Local Exchange Service to Residential Customers; Maryland People's Counsel letter to Daniel P. Gabagan dated September 24, 1996.

establishes wholesale rates, unbundled element rates and nonrecurring charges that are too high, then other new entrants, like MFS, also will be unable to give reasonably-priced local service alternatives to Maryland consumers.

Fortunately, the record in this case clearly supports competition-enhancing results on every disputed issue between EA-MD and AT&T. So that Maryland consumers will have the benefits of local exchange competition as quickly as possible, this Commission should:

- Adopt a wholesale discount rate of **26.7%** for the services BA-MD provides to resellers that provide their own operator and directory services;
- Adopt the FCC's default proxy rates, or appropriate cost-based rates where there is no FCC default proxy rate, for interim loop rates, switching usage, the line port, and non-recurring charges;
- For call termination, uphold the interconnection rates established in Case No. 8584-II, i.e., \$.003 for interconnection at BA-MD's end office and \$.005 for interconnection at BA-MD's tandem and establishing a \$.005 rate for interconnection at a CLEC's network;
- Permit AT&T and other new entrants to collocate remote switching modules and to utilize switching functions of the modules;
- Require that EA-MD make its customer specific contracts available for resale in the same way its sister companies have done in Pennsylvania, Virginia and the District of Columbia;
- Direct that EA-MD extend the wholesale discount rate to a reseller's provision of additional directory listings, nonpublished numbers and unlisted numbers;
- Require EA-MD to unbundle its unused transmission media (often termed "dark fiber"); and
- Reject, in accordance with the Act, BA-MD's recommendation that AT&T be required to unbundle its network elements and to establish wholesale rates.

All of these results are fully consistent not only with the letter of the Act and the FCC's implementing orders, but with the pro-competitive spirit that is manifested in that statute and those orders. Accordingly, the adoption of these positions in the

interconnection agreement between BA-MD and AT&T will help make the promise of competition a reality for the citizens of Maryland.

I. THE STAY ISSUED BY THE COURT OF APPEALS SHOULD NOT STOP, DELAY OR AFFECT THE OUTCOME OF THE ARBITRATION.

The Commission has requested that the parties discuss the impact, if any, on this arbitration of the partial stay of the FCC rules² that was granted by the U.S. Circuit Court of Appeals for the Eighth Circuit on October 15, 1996.³ The answer is simple -- that stay should have no effect, either procedurally or substantively, on the **Commission's** decisions in this arbitration.

As an initial matter, the stay applies solely to the pricing methodologies and default proxies prescribed by the FCC.⁴ It does not apply to those rules that address matters other than pricing. Even concerning the pricing rules to which the stay does apply, however, the outcome of this arbitration should be the same as if a stay had not been issued. The only effect of the stay is to preclude the FCC from seeking to *enforce* the pricing methodologies and proxies; the stay does not preclude this Commission from following the analyses and policies put forward by the FCC in its rules and Order.

Even more importantly, application of the FCC's pricing rules and TELRIC methodology remains sound substantive policy. The FCC pricing rules embody the appropriate economic principles necessary to the proper implementation of the Act, and the FCC Order itself is extremely probative evidence of the pricing levels which are consistent with the Act.⁵ Because this Commission will be applying the same provisions of the Act that were at issue before the FCC, and will be considering the same arguments, there is no rational basis for discounting or ignoring the FCC rules. For example, the requirement that prices for unbundled network elements be based on a

² First Report and Order of the FCC in In the Matter of the Local Competition Provision in the Telecommunication Act of 1996 ("FCC Order"). CC Docket No. 96-98 (August 8, 1996).

³ Order Granting Stay Pending Judicial Review, Iowa Utilities Board v. FCC. Docket Nos. 96-3321 et al. (8th Cir. October 15, 1996).

⁴ The only non-pricing provision that has been stayed is *the* so called "pick and choose" provision which would allow new entrants to opt for provisions in other parties' agreements.

⁵ It is well to recall that the FCC Order was the product of thousands of person-hours of analysis and thousands of pages of record submissions. Accordingly, it represents the most comprehensive attempt possible to establish the proper approaches for implementing the requirements of the Telecommunications Act.

forward-looking methodology such as Total Element Long Run Incremental Costs ("TELRIC") is both required by the Act and necessary to achieve its objectives. This fundamental reality is in no way affected by the jurisdiction (i.e. federal or state) which issues the rules.

Thus, if this Commission adopts, as it should, TELRIC and the FCC's other procompetitive pricing rules in Maryland, then all of the Act's objectives, and especially the development of local competition, can still be achieved notwithstanding the stay. In contrast, if this Commission were to depart from the Act and not impose these requirements, then the achievement of these objectives will be substantially imperiled.

In any event, BA-MD has agreed with ATBT in this proceeding to the continued application of the FCC Order and implementing rules -- indeed, to the general application of the FCC proxy rates for unbundled network elements -- regardless of the stay. As was provided in the Agreement for Withdrawal and Modification of Arbitration Issues that was filed by ATBT and BA-MD in this case, the parties' agreement to operate under the FCC Order and rules was subject only to revision in the event the Order was "overturned or modified."⁶ Under the plain language of the agreement, a stay is of no effect.

This reading has been borne out by Bell Atlantic's representations in other arbitration proceedings with ATBT in which this same agreement has been adopted. As recently as October 10 Bell Atlantic's counsel in Virginia stated for the record his company's position that the FCC order should be given "full force and effect" despite any stay:

[I]t's the agreement of ATBT and Bell Atlantic that **we will proceed in this arbitration, in our arbitration with applying the FCC's rules and procedures, whether or not there is a stay at issue.** . . . But given the strict statutory deadlines that we all face for deciding these arbitrations, we believe that this is the most expeditious way to handle this, and we believe it's within the powers under the Act, first for the parties to help define what the issues are in the arbitrations, and **we wish to apply the FCC's rules and procedures as set forth in its order to settle these arbitrations.'**

⁶ Agreement for Withdrawal and Modification of Arbitration Issues, at 1-2

¹ Statement of Warner Brundage, Esq., Vice-president and General Counsel, Bell Atlantic-Virginia, Inc., before the Virginia State Corporation Commission, Docket No. 960100, Tr. 14 (October 10, 1996) (emphasis added),

Similarly, on October 16 Bell Atlantic's Vice President and General Counsel for its Washington, D.C. company asserted on the record on October 16 that **Bell Atlantic-Washington, D.C.** was willing to comply with the FCC's proxy rates on an interim basis.'

If BA-MD now claims that the stay should impact this proceeding, the Commission should dismiss such arguments as regulatory gamesmanship. The Commission can and should proceed on course with its decision-making.

Thus, it is with this view of the impact of the Eighth Circuit Stay and Bell Atlantic's willingness to press forward with the proxy rates for unbundled elements that AT&T responds to the questions raised by this Commission in its October 16 Order No. 72946:

1) What is the impact of the stay on the Commission's decision to exclude Bell Atlantic's cost study?

Simply stated, there is no impact from the stay on this Commission's September 26, 1996 decision to exclude BA-MD's cost studies, establish interim proxy rates "for unbundled elements and any other pricing issues dependent upon the TELRIC cost studies" and postpone further consideration of all cost studies.⁹

As noted above, the stay's only impact is to prevent the FCC from enforcing its order. It does not preclude a state commission from adopting the FCC's guidance on these issues. The Maryland Commission may use the default proxies devised by the FCC, and, going forward, may require parties to prepare and submit **TELRIC** cost studies in support of permanent rates, just as it had decided prior to the stay."

2) What cost studies should the Commission consider? Should the Commission consider only TELRIC studies or permit more traditional cost studies to be proffered?

The Commission can adopt interim default proxies now, and consider cost studies in a Phase II proceeding, as planned. There is no reason that the Commission

⁸ Prehearing conference of October 16, 1996, Telephone Arbitration Case No. 6, Public Service Commission of the District of Columbia.

⁹ See Ruling on Motion to Exclude Bell Atlantic's Cost Studies and to Initiate a Rulemaking, September 26, 1996.

¹⁰ Id.

must consider cost studies now, although the Hatfield Model is available to the commission as part of the record.

For the Phase II proceeding, the Commission should require all parties to submit TELRIC-type cost studies. The requirement that prices for unbundled network elements be based on forward-looking Total Element Long Run Incremental Costs ('TELRIC'), is both required by the Act and necessary to achieve its objectives. By adopting TELRIC-type studies and other procompetitive pricing rules, this Commission can ensure all of the Act's objectives, including the development of local competition, can still be achieved notwithstanding the stay.

3) What is the effect of the stay on the requirement to de-average loops?

Once again, this Commission can, and should, follow the FCC's guidance on this issue. The Act requires that prices for unbundled elements be cost-based and, as the FCC Order concludes, loop costs vary substantially based on a number of factors, not the least of which is population density. In Maryland, it is obvious on its face that loop costs are lowest in Baltimore, somewhat higher in the more populated suburbs around Baltimore and Washington, and highest in the more rural parts of the State. Loop rates should be deaveraged to track these differences in cost characteristics. It is for that reason AT&T supports the Staffs interim approach to geographically deaveraged loop rates.

Another key reason for the Commission to press ahead with deaveraged loop rates is that BA-MD has agreed to them. As noted above, BA-MD has agreed to abide by the FCC proxy rules unless reversed or modified. The stay does not change that agreement.

4) The Commission set specific rates in Case No. 8584, Phase II. Should the Commission readdress those issues now or keep these current rates in effect until the cost study issue is resolved?

As noted above, the Commission should continue forward with its decision to apply the FCC's proxy rates on an interim basis. That does not mean, however, that the rates from 8584-II should be ignored. To the contrary, where those rates are consistent with the FCC's proxy rate analysis, they should be permitted to stand. Indeed, the FCC's decision to set the proxy switching range from 0.2 cents to 0.4 cents per minute was based, in significant part, on this Commission's work in Case 8584-II. That is why

AT&T recommends that, for call termination, this Commission continue to keep in effect its 0.3 cent per minute rate for calls terminated at an end-office and 0.5 cent per minute rate for calls terminated at a tandem.

With regard to loop rates and line port charges, however, this Commission's decision in 8584-II is not consistent with either the Act or the FCC's proxy methodology which AT&T and Bell Atlantic have agreed to follow. As noted above, the rationale behind the proxy rates is to replicate, on an interim basis, prices that reflect BA-MD's forward-looking costs of providing those services, consistent with the costing requirements of the Act. In Case 8584-II, the interim loop and port rates were not based on a cost study, much less a TELRIC-type study. Rather, interim rates for unbundled loops and ports were set at levels that, when totaled, would equal the price of bundled BA-MD local dial tone line service.¹¹ There was no examination of the incremental costs of those unbundled elements, and rates were not set to reflect those costs. Therefore, for those elements, the Commission should rely on the FCC's default proxy rates until the Commission has performed an incremental cost analysis that would satisfy the Act's requirements.

With regard to other unbundled elements, including transport elements, signaling and databases, operations support systems, and operator and directory systems, this Commission's Order in Case 8584-II is silent. Clearly, this Commission must look to the FCC's Order for guidance in establishing proxy rates for those elements. The same analyses and policy decisions that produced the proxy rates for those elements should drive this Commission's decisionmaking in establishing proxy loop rates, switching rates and call termination rates here.

5) What impact does the stay of the FCC's "pick and choose" rule have on current arbitrations and negotiations?

The stay of the "pick and choose" rule will likely have minimal impact on the parties to this arbitration proceeding because the Commission is deciding the key pricing issues on a consolidated basis. The rates available to one party to this case will be available to all. Nonetheless, this Commission should confirm that the FCC's interpretation of § 252(i) of the Act is correct.

¹¹ Case No. 8584-II, Order No. 72348, Dec. 28, 1995 at 37-38.

Rather than stating that a LEC must make each agreement it reaches with competitors available to others, Section 252(i) of the Act explicitly provides that a "local exchange carrier shall make available any interconnection, service, or network elementary interconnection, service, or network element provided under an agreement . . . to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." § 252(i) (emphasis added). As the FCC's Order (¶ 1310) notes, "Congress drew a distinction between . . . 'element provided under an agreement,' which the statute lists individually, and agreements in their totality."¹² The FCC's straightforward interpretation of this provision is not only reasonable, but plainly correct.

II. THE WHOLESALE DISCOUNT RATE SHOULD BE SET AT 26.7%.

Recommended Ordering Paragraph

BA-MD shall offer a wholesale discount of 26.7 percent to telecommunications carriers reselling BA-MD's retail services.

Argument

A. Introduction

As the FCC found, resale is crucial to the development of local competition, and thus the establishment of an appropriate wholesale rate discount is an essential prerequisite to effective resale competition.¹³ Only a discount that fully comports with the mandate of Section 252(d)(3) the Telecommunications Act -- that the wholesale discount shall be determined "on the basis of retail rates . . . excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier" -- will allow AT&T to compete fairly and

¹² Congress sensibly required LECs to make individual elements provided under an agreement available to others on an unbundled basis, for otherwise LECs could offer sweetheart deals to some competitors for certain services, **while** deferring others ~~from requesting those agreements by inserting other onerous terms and conditions in the agreement~~ for facilities and services that the first carrier does not need and will not care to contest.

¹³ First Report and Order of the Federal Communications Commission (FCC) In the Matter of Implementation of the Local Competitions Provisions in the Telecommunications Act of 1996 (Local Competitions Order), CC Docket No. 96-98 (August 8, 1996), at ¶ 907.

vigorously with BA-MD. Accordingly, in its guidelines, the FCC made clear that the costs to be deducted from the retail rate include not only those that the incumbent LEC actually chooses to avoid, but rather all costs "that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers." Conversely, an inappropriately low discount, such as that proposed by BA-MD, will damage, perhaps irreparably, the ability of AT&T and other new competitors to open Bell's local exchange market to competition.

AT&T recommends that the Commission require BA-MD to offer its retail services to competing local exchange carriers ("CLECs") at a wholesale discount of 26.7%. As demonstrated in AT&T's testimony, AT&T's wholesale discount rate is consistent with the Act and the FCC Rules. Set forth below is a detailed review of AT&T's avoided cost study which confirms the reasonableness of AT&T's offer.

B. In contrast to BA-MD's approach, AT&T's Avoided Cost Methodology provides an accurate assessment of the avoided costs in the wholesale discount rate calculation.

To implement Section 252(d)(3) of the Act,¹⁴ the FCC established specific criteria by which avoided costs studies had to be conducted. It began by dividing the relevant USOA accounts into three categories:

1. Accounts associated with "the direct costs of serving customers" are presumed to **be** 100% avoidable.¹⁵
2. Accounts associated with the indirect expenses related to direct customer service costs (including return), a portion of which are presumed to be avoided in the same proportion as direct expenses are avoided;¹⁶ and
3. Plant-specific and plant non-specific expenses (i.e., expenses associated with plant and facilities used in whole or in part to provide retail service)

¹⁴ Section 252(d)(3) provides in pertinent part, "[A] State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that **will** be avoided by the local exchange carrier."

¹⁵ FCC Order ¶ 917; 47 C.F.R. § 51.609(c)(1)

¹⁶ *Id.* at ¶ 918; 47 C.F.R. § 51.609(c)(2).

are to be deemed avoided only if the new entrant proves that they can reasonably be avoided in providing wholesale service."

With respect to costs in Category 1 above, the burden of proof is on the ILEC to prove that specific costs in those accounts will be incurred and are not avoidable with respect to services sold at wholesale."¹⁷ In Category 3 the burden is upon the new entrant to prove that the costs can reasonably be avoided when providing wholesale service.¹⁹ Because the allocation of Category 2, indirect expenses, is contingent upon the avoided cost determinations in Category 1 and presumed to be avoided in proportion to them,²⁰ the reasonable conclusion is that the FCC intended to require that the burden is upon the ILEC to prove that its claimed level of indirect expenses is not avoidable.

Accordingly, the FCC has placed the burden squarely on BA-MD to prove that its claimed level of "unavoided" expenses for both direct and indirect retail costs will actually be incurred with respect to services sold at wholesale. This is a burden that Bell has clearly failed to meet. On the other hand, AT&T's presentation clearly satisfies its obligation to show that plant specific and non-plant specific costs are reasonably avoidable when service is provided solely at wholesale.

¹⁷ Id. at ¶ 919; 47 C.F.R. § 51.609(c)(3),(d). The FCC acknowledged a fourth category of cost -- cost onsets -- i.e., new costs that BA-MD **could** incur in establishing its wholesale business, and allowed that they could be recoverable in the wholesale discount. FCC Order, ¶ 928.

¹⁸ 47 C.F.R. § 51.609(d)

¹⁹ Id.

²⁰ Id. at ¶ 918.

1. Differences Between AT&T and Bell Recommendations.

ISSUE	IMPACT ON
	WHOLESALE DISCOUNT
EA-MD has not included all avoidable direct costs that it would not incur if it were to provide wholesale service exclusively. <ul style="list-style-type: none"> • Advertising • Sales • Customer Services • Product Management 	2.5
Certain call completion and number services expenses should be treated as avoided, and operator and directory services revenues should be included in the analysis. <ul style="list-style-type: none"> • Call Completion • Number services 	1.4
BA-MD's wholesale uncollectibles will be minimal.	1.3
BA-MD's plant-related expenses for operator and directory services, and repair answer centers that AT&T will provide, should be treated as avoided. <ul style="list-style-type: none"> • Operator Systems Expense • Operations Testing 	1.2
EA-MD has understated its allocations factor for all indirect expenses. <ul style="list-style-type: none"> • General Support Expenses • Executive and Planning Expenses • General and Administrative Expenses 	2.9
A portion of BA-MD's return and depreciation should be treated as an avoided cost. <ul style="list-style-type: none"> • Avoided Return 	2.7
Additional costs claimed by EA-MD	.5
Impact of Differences on Overall Wholesale Discount	12.5%

There are two major reasons for the disagreements between the parties' analyses. First, for virtually every account, EA-MD has refused to accept the presumptions established by the FCC for direct and indirect customer- related costs and has insisted that less costs -- or no costs -- will be avoidable when providing service at

wholesale. Second, BA-MD has failed to apply the standard mandated by the FCC in accordance with Section 252(d)(3) for evaluating whether its costs in these accounts will be incurred and are not avoidable when providing wholesale, as opposed to retail, service.

In contrast, AT&T uses the framework for analysis mandated by the FCC Order, and fully consistent with the Act: whether the ILEC would continue to incur a particular cost if it were providing service solely on a wholesale basis. The key passage from the FCC's Order is in paragraph 911:

We find that 'the portion [of the retail rate] . . . attributable to costs that will be avoided' includes all **of** the costs that the **LEC** incurs in maintaining a retail, as **opposed** to a wholesale business. In other words, the avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers.²¹

Stated simply, the FCC standard requires that the costs that BA-MD would not incur if it provided no retail service at all must be characterized as avoidable. In contrast, BA-MD has consistently insisted that costs are avoidable when they are sensitive to the number of retail customers that Bell Atlantic serves, or by the volume of the specific product being sold.²² While BA-MD witness Edwin Hall stated that the Commission should use the "wholesale only" theoretical construct to **set** the wholesale discount rate,²³ BA-MD's actual analysis is demonstrably inconsistent with that FCC-mandated construct.

Time and time again, BA-MD insists that it will continue to incur substantial costs in the marketing and customer service-related areas. This argument is based on its claim that the very same retail operation (i.e., the same size and complexity) it now has would still have to be in place to perform services for resellers. or that its retail activities would somehow "benefit" resale. In contrast, the FCC-mandated approach makes the prudent and reasonable assumption that by identifying the costs that BA-MD would avoid if it were providing service wholly to resellers, the remaining level of costs are those that a prudent business would actually devote to the wholesale portion of a multi-level operation. A wholesale-only business obviously will have substantially fewer

²¹ FCC Order ¶ 911 (emphasis added)

²² BA-MD Petition for Arbitration, Attach. C at p.4(7/15/96); BA-MD Comments, at p.11 (916196); Bell Atlantic Witness Hall, Tr. at 564:8-9.

²³ Hall, Tr. at 577:5-7

customers and a completely different (and smaller) level of "customer-related" costs than a retail business. BA-MD's approach, in contrast, leaves in costs associated with the scope and scale of operation it historically has experienced when providing service directly to millions of retail customers throughout Maryland. This methodological error is the essential reason why BA-MD consistently understates the level of costs that are reasonably avoidable in providing wholesale service, and why BA-MD fails to meet its burden of proof.

2. Direct Customer Related Costs.

The FCC determined that "a large portion" of the costs in the following accounts are avoided when service is sold at retail and presumed that they were 100% avoided unless an ILEC could prove otherwise:

- (1) Product Management (account 6611).
- (2) Sales (account 6612).
- (3) Product Advertising (account 6613).
- (4)** Call Completion Services (account 6621).
- (5)** Number Services (account 6622).
- (6) Customer Service (account 6623).²⁴

For each of these accounts, not only has BA-MD failed to meet its burden of proof that these costs will continue to be incurred when providing wholesale service, **but** AT&T has also provided substantial evidence (even though it is not AT&T's burden to do so) to prove just the opposite.

(a) Product Advertising Costs.

AT&T Position:	100% Avoidable.
BA-MD Position:	0% Avoidable.

AT&T's study, consistent with the FCC Order, has identified 100% of BA-MD's retail advertising costs as avoidable in a wholesale environment. BA-MD agrees that under the FCC's theoretical construct "you look at all your costs and determine what is reasonably avoidable when operating in the wholesale business."²⁵ The issue should end there. Inexplicably, however, BA-MD has claimed that none of the costs of Product

²⁴ FCC Order ¶ 917.

²⁵ Hall, Tr. 563: 17-20.

Advertising should be considered avoidable in a wholesale environment²⁶ Because BA-MD claims that its advertising will stimulate end-user demand, the costs of advertising should not be considered avoidable.²⁷

BA-MD is simply wrong. BA-MD's arguments with respect to advertising are totally at odds with its position on the Sales account, which, following Mr. Hall's analysis, could involve sales activities that could have the same "demand stimulus" benefit as BA-MD claims for advertising. Nevertheless, BA-MD admits that the Sales account is 100% avoidable.²⁸ EA-MD also irrelevantly argues in support of its position that advertising by wholesalers is a common occurrence and points to advertising by Coca Cola and Intel as examples.²⁹ As AT&T witness Mr. Kirchberger explained, those examples are misplaced.³⁰ When wholesalers advertise they are not competing directly with their retailers for the same customer base. The product-specific advertising conducted by Coca-Cola or Intel, for example, is directed not at achieving market share over retailers but at achieving market share vis-a-vis other wholesalers, i.e., Pepsi Cola or AMD (a competitor of Intel). Certainly, such advertising would be completely unnecessary in the present environment in which EA-MD as a wholesaler has no competition and therefore has no need to advertise to attract market share from other wholesalers.³¹

Finally, even if one were to conclude that some level of product-specific advertising would likely occur in a wholesale-only environment (perhaps five to ten years from now when BA-MD has wholesale competitors), there is no basis for concluding that such expenditures would come anywhere near BA-MD's present level of retail advertising; yet this is what EA-MD is claiming. Certainly EA-MD has presented no evidence sufficient to overcome the presumption that its present Product Advertising expenditures would be 100% avoidable in a wholesale environment.

²⁶ Hall, Tr. at 575:15-21

²⁷ Id.

²⁸ Hall, Tr. at 575:6-14.

²⁹ Hall, Tr. at 575:22-576:8.

³⁰ AT&T Witness Robert J. Kirchberger, Tr. at 623:1-23.

³¹ **BA-MD** would also benefit from product-specific advertising by AT&T, but BA-MD has **not** recommended that it should compensate AT&T for such advertising.

(b) Product Management.

AT&T Position:	67% avoidable.
BA-MD Position:	18% avoidable.

Product Management costs were defined without contradiction by AT&T witness Kirchberger as "costs associated with product life cycle, development of new products, tariffing, pricing, market planning, [and] developing of distribution channels."³² AT&T's definition of Product Management is drawn from the FCC Order which characterizes the costs in this account (along with accounts 6612, 6613, and 6623) as "the direct costs of serving customers" and which presumes that all product management costs are avoided in determining the wholesale rate, unless the ILEC proves otherwise. Under the FCC's "wholesale only" construct, a significant portion of these costs will be avoided because BA-MD will be performing product management functions for a limited number of resellers, not for the approximately two million Maryland consumers for whom it currently performs the function. Consideration of the much more limited product management function that BA-MD will perform as a wholesaler led AT&T conservatively to determine the avoidable costs to be 67%.³³

Furthermore, BA-MD's suggestion that only 18% of the product management costs are reasonably avoidable arises from BA-MD's continued monopolistic view of the local telecommunications market as a market where BA-MD will handle the product management and generate new products to be sold through "sales channels." such as AT&T.³⁴ AT&T is BA-MD's competitor to whom BA-MD is obligated to resell telecommunications services at a wholesale rate that is discounted to remove costs that are avoided by BA-MD as a wholesaler. AT&T is not a "sales channel" for BA-MD products. AT&T is a competitor of BA-MD's, and as such, will perform its own product life cycle, new product development, tariffing, pricing, market planning and distribution functions. It follows that BA will need to perform only a small portion of these functions when it provides service to its handful of wholesale customers. As a result, BA-MD's claim that only 18% of this account should be deemed avoided is patently unreasonable on its face. Considering this evidence, BA-MD obviously *has* failed to sustain its burden

³² Kuchberger, Tr. at 524:18-21.

¹¹ Kirchberger, Tr. at 638:12-18.

³⁴ See Hall, Tr. at 573:16-20.

of proof that any portion of this account is related to providing service at wholesale: on the contrary, the evidence proves the opposite. Certainly AT&T's position that 67% of the account is avoidable is more than reasonable,

(c) Customer Service Costs.

AT&T Position:	90% avoidable
BA-MD Position:	78% avoidable

Customer service costs are the costs of "interface with the customer", *i.e.* costs associated with the establishment and service of retail customer accounts, including responding to customer requests for service and customer inquiries as well as processing service orders and customer billing operations.³⁵ Under the FCC Order, all of these costs are presumed to be 100% avoided, unless an ILEC can prove otherwise.³⁶ While both BA-MD and AT&T appear to agree that a substantial portion of this account should be avoided, BA-MD's position results in \$12.5 million less in avoided costs and reduces the overall wholesale discount by a more than a full percentage point.³⁷ The reason for the difference is that BA-MD has ignored the FCC Order directing that, for any amounts in this account to **be** deemed not avoided, the account should be analyzed to determine what portion of these costs (if any) would continue to **be** incurred in a wholesale environment.³⁸

Virtually all of this account contains costs that are associated with providing service to retail (as opposed to wholesale) customers. To be sure, a small portion of the activities in these accounts will still have to be performed by the wholesaler (e.g., actually taking instruction from the wholesaler to suspend or terminate service, or to change an end-user's service, etc.) but all of the necessary "precatory" tasks leading up to that suspension or change order (such as discussing the issue with the customer, establishing a payment plan, discussing the suspension and the terms of resumption of service, etc.) will be the responsibility of the reseller and not BA-MD.³⁹ Indeed, all costs

³⁵ Kirchherger, Tr. at 523:4-14

³⁶ 47 C.F.R. § 51.609(c)(1)

³⁷ AT&T Ex. 3

³⁸ See 47 C.F.R. 51.609(c)(1).

³⁹ Kirchberger, Tr. at 527:21 - 528:5; *see also* MCI witness DeFalco, Tr. at 552:2-5.

not specifically associated with the actual physical change of the customer's service will now be borne by the reseller.⁴⁰

BA-MD insists that it conducted an activities-based study to determine the portion of service representative time related to activities which it claims will not be avoided, such as service denial and restoral.⁴¹ It then developed a composite of expenses not avoided in connection with these various activities and applied that composite percentage to all subaccounts in the account. This approach contains several obvious flaws. First, it does not begin with a threshold analysis of activities and functional accounts which would be entirely avoided because they are wholly related to providing retail service. By applying its claimed percentage "across the board." BA-MD has, for several of the subaccounts (such as subaccounts which include activities relating to retail sales), not avoided costs associated with activities which will **be** performed entirely by the reseller, and thus avoided entirely by the wholesaler.

Second, BA-MD's analysis assumes that its costs for such activities as service denial and restoral or annoyance call handling will not change in a wholesale environment. This is obviously wrong. Resellers and not BA-MD will handle all the customer interface in both of these categories, leaving for BA-MD only the last leg of the transaction--the processing of the actual service shut off or the application of a trap and trace device to investigate an annoyance call, for example.⁴² It follows that BA-MD's costs for these activities would be a tiny fraction of what they are today for providing the whole range of functions for the end-user that are associated with these activities. In fact, if BA-MD's methodology were adjusted to avoid the costs of service denial and restoral and annoyance call handling, the differences **between AT&T** and Bell on this account would be substantially eliminated. As BA-MD has the burden of demonstrating that every dollar claimed in the Customer Service account will be incurred in providing service at wholesale, only one conclusion is possible: BA-MD has not met its burden, and AT&T's recommendation must be accepted.

(d) Call Completion and Number Services.

AT&T Position:

⁴⁰ Kirchberger, Tr. at 524:3-11.

⁴¹ Hall, Tr. at 583:4-585:11

⁴² Kirchberger, Tr. at 524:3-11.

Call Completion - 72% avoidable;
Number Services - 68% avoidable

BA-MD Position:
Call Completion - 43% avoidable;
Number Services - 29% avoidable.

The FCC presumes that when a reseller is going to provide its own call completion services with its own operators (as is the case with ATBT) call completion service should be deemed 100% avoided. Similarly, number services are presumed to be 100% avoided for resellers that will be supplying their own directory services (like ATBT), except for those portions related to providing white pages (a service which will continue to be utilized by all resellers).⁴³ AT&T recognized, however, that EA-MD will still be providing some call completion services in the resale environment, such as intercept and enhanced 911 service.⁴⁴ In fact, when presented with additional evidence from EA-MD regarding the costs associated with intercept and enhanced 911 services, ATBT altered its wholesale discount rate recommendation from 26.9% to 26.7% to reflect the fact that costs of those functions will not be avoided by BA-MD in a wholesale environment.⁴⁵

ATBT and EA-MD differ because EA-MD has excluded from its analysis those costs associated with revenue-generating call completion and number services, such as directory assistance.⁴⁶ EA-MD claims that all of the revenues and the associated costs should be completely removed from the study even before an avoided cost analysis is performed.⁴⁷ The result is a reduction in the total revenues and the total avoided expenses, which in turn results in an artificial understatement in the wholesale discount. BA-MD's approach is clearly erroneous.

Both ATBT and EA-MD agree that, as a threshold matter, it is appropriate to adjust BA-MD's reported revenues and expenses to exclude categories of service that are not subject to the resale at wholesale rate requirement of the Act and the FCC rules; but operator and directory services are so subject. The FCC Order directed that these

⁴³ Kirchberger, Tr. at 526:9-12.

⁴⁴ Kirchberger, Tr. at 526:5-8.

⁴⁵ Kirchberger, Tr. at 630:7-13.

⁴⁶ Hall, Tr. at 580:7 - 581:15.

⁴⁷ Id.

expense accounts be deemed 100% avoided.⁴⁸ The **FCC** Order provides no justification to make threshold adjustments to the initial revenue and expense levels on the basis of the list of services that a particular reseller may announce it is going to purchase, or the parts of BA-MD's service territory in which a reseller is going to provide service.⁴⁹ By excluding a large portion of the revenues and expenses in this account, BA-MD falls to avoid these expenses without sufficient justification to satisfy its burden of proof. AT&T's revenue base (which includes revenues from directory assistance and operator services) should be used to calculate the appropriate wholesale discount. Using AT&T's revenue base and accounting for costs associated with wholesale functions that BA-MD will continue to perform, 72% of the call completion service costs and 68% of the number service costs should be considered avoided.

(e) Avoided Direct Expenses -- Operator Systems, Operations Testing and Operations Plant Administration.

AT&T Position:

Operator Systems Expense - 100% avoidable;

Depreciation on Operator System Assets - 100% avoidable;

Operations Testing and Operations Plant Administration - 20% avoidable.

BA-MD Position:

Operator Systems Expense - 0% avoidable;

Depreciation on Operator System Assets - 0% avoidable;

Operations Testing and Operations Plant Administration - 0% avoidable.

The **FCC** Order established a second category of direct expenses which are avoidable if a reseller proves that the costs are reasonably avoidable by an **ILEC** when providing service at wholesale.⁵⁰ Four relevant direct expense accounts fit into this category: Operator System Expense (account 6220). Operations Testing (account 6533), Operations Plant Administration (account 6534). and Depreciation and

⁴⁸ FCC Order, ¶ 917.

⁴⁹ Kirchberger, Tr. at 630:21 - 631:5.

⁵⁰ 47 C.F.R. § 51.609(d).

ATTACHMENT 6

Verizon New York Inc.'s Connecticut Tariff
No. 12 Section 5 1st Revised Pages 142 and
143

and

Verizon New York Inc.'s Tariff No. 10
Section 5 Original Page 147, Second
Revised Page 148 and First Revised Page
153

NETWORK ELEMENTS

5. Unbundled Network Elements (Con'l'd)5.8 ATLAS View of Listings Service5.8.1 General

ATLAS View of Listings Service provides the CLEC with the ability to electronically request and view Directory listing of an end user. The view of the listing reflects the most recent, completed service order activity. This Service provides the CLEC with an accurate display of how the listing will appear in the upcoming published directory

5.8.2 Service Description

ATLAS View of Listings Service is provided through an on-line electronic interface system, the CLEC will launch a query for either a straight line or caption package listing, using as an access key either a listings identifier, a package identifier, a full name, a partial name, or a telephone line number.

The two types of listings and the two corresponding types of query transactions that the CLEC may request are as follows:

- (1) A straight-line listing which is a single record containing all of the listing information associated with the end user. This type of transaction searches for all single line listings that match the access key (e.g. customer name)
- (2) A caption package listing which consists of a group of records under a single corporate or organizational heading (or caption) With up to six additional levels of sub-headings and individual listings. This type of transaction searches for all multiple listings that match the access key.

5.8.3 Regulations

- (1) The CLEC will be able to view all current published listings for customers of all local carriers including the Telephone Company, although the identity of the serving carrier will not be indicated. This will allow the CLEC real-time access to an up-to-date display of the listings database.
- (2) The request for this service will be transmitted by the CLEC to the Company's Telecom Industry Services Operations Center in electronic format via a communications link established between the CLEC and the Company. The current customer listings record will be formatted by the Company and transmitted electronically back to the CLEC.
- (3) An electronic Listing Retrieval Charge applies to each electronic Directory listing delivered to the CLEC. A CLEC may request any number of Directory listings, but will only be charged for the number of electronic Directory listings successfully transmitted to the CLEC.

5.8.4 Application of Rates and Charges

Monthly rates and charges for requests for ATLAS View of Listings Guide will be billed to the CLEC as set forth in 5.8.5 following.

Verizon New York Inc.

Section 5
1st Revised Page 143

NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)5.8 ATLAS View of Listings Service (Cont'd)5.8.5 Rates and Charges (Cont'd)

	<u>Rates</u>	
<u>ATLAS View of Listings Service</u>		
Per Electronic Listing Retrieval Charge		
- Per transaction	\$0.204	(C)

5.9 Access to Operations Support Systems (OSS)

5.9.1

The Telephone Company provides access to other Certified Local Exchange Carriers to the functionalities of the Telephone Company's Operations Support Systems in connection with the purchase of Unbundled Network Elements. This access supports the pre-ordering, ordering, provisioning, maintenance and repair and billing of the unbundled network elements purchased by CLECs.

5.9.2 Application of Rates and Charges

A monthly OSS ongoing cost recovery charge applies to all UNE loops and UNE-P loops. A per record charge applies for each Customer Service Record (CSR) retrieved by the CLEC.

(N)

5.9.3 Rates and Charges

	<u>Monthly Rate</u>	<u>USOC</u>
Access to OSS Charge		
- Per UNE Loop	\$ 0.55	(NOTE)
- Per UNE-P Loop	0.55	(NOTE)
Electronic Customer Service Record Retrieval		
- Per record	0.103	(NOTE)

5.10 911/E911 Services

A monthly common access charge to 911/E911 applies, per access line, to UNE-P and UNE Line Ports when the Telephone Company provides the dial tone.

(T)

(N)

<u>Monthly Rate</u>
\$0.022

(N)

(NOTE) USOC to be provided at a later date.

(N)

NETWORK ELEMENTS5 Unbundled Network Elements (Cont'd)5.8 Directory Assistance and Operator Services (Cont'd)5.8.1 Directory Assistance (DA) Services (Cont'd)5.8.1.7 ATLAS View of Listings Service(A) General

ATLAS View of Listings Service provides the TC with the ability to electronically request and view Directory listing of an end user. The view of the listing reflects the most recent, completed service order activity. This service provides the TC with an accurate display of how the listing will appear in the upcoming published directory.

(B) Service Description

ATLAS View of Listings Service is provided through an on-line electronic interface system. The TC will launch a query for either a straight line or caption package listing, using as an access key either a listings identifier, a package identifier, a full name, a partial name, or a telephone line number.

The two types of listings and the two corresponding types of query transactions that the TC may request, are as follows:

- (1) A straight-line listing which is a single record containing all of the listing information associated with the end user. This type of transaction searches for all single line listings that match the access key (e.g., customer name).
- (2) A caption package listing which consists of a group of records under a single corporate or organizational heading (or caption) with up to six additional levels of sub-headings and individual listings. This type of transaction searches for all multiple listings that match the access key.

(C) Regulations

- (1) The TC will be able to view all current published listings for customers of all local carriers, including the Telephone Company, although the identity of the serving carrier will not be indicated. This will allow the TC real-time access to an up-to-date display of the listings database.
- (2) The request for this service will be transmitted by the TC to the Telephone Company's Telecom Industry Services Operations Center in electronic format via a communications link established between the TC and the Telephone Company. The current customer listings record will be formatted by the Telephone Company and transmitted electronically back to the TC.
- (3) An electronic Listing Retrieval Charge applies to each electronic Directory listing delivered to the TC. A TC may request any number of Directory listings, but will only be charged for the number of electronic Directory listings successfully transmitted to the TC.

NETWORK ELEMENTS5 Unbundled Network Elements (Cont'd)5.8 Directory Assistance and Operator Services (Cont'd)5.8.1 Directory Assistance (DA) Services (Cont'd)5.8.1.7 ATLAS View of Listings Service (Cont'd)(D) Rates and Charges

The rates and charges for requests for ATLAS View of Listings Guide as set forth in Section 5.8.8(D) following.

5.8.2 Basic Operator Services

Under this option, the Telephone Company will provide basic operator services, both automated and live as described below.

5.8.2.1 Automated Operator Services (0+/Mechanized Operator Services)

This option enables the TC's end users to alternately bill their calls without live operator assistance. Alternate billing consists of calling card, collect, and bill to third number. This automated process occurs when the TC's end users dial 0+ and reach the Telephone Company's mechanized operator interface. The Telephone Company will return calls requiring completion to the TC's facilities, where the TC will provision for applicable call completion services unless the parties mutually agree to an alternative. (C)

The Telephone Company will bill the TC for each 0+ mechanized call occurrence, as set forth in Section 5.8.8(A) following. At the TC's request, the Telephone Company will provide TC specific branding, which will be billed per occurrence in addition to the charges mentioned above. (C)

5.8.2.2 Live Operator Services

This option enables the TC's end users to reach a live Telephone Company operator for assistance. This assistance includes the following call types: calling card, collect, bill to third number, person to person, emergency, busy line verification and interrupt, operator passthrough, and miscellaneous information. This live process occurs when the TC's end users dial 0- and reach the Telephone Company's operator services switch and live operator. The Telephone Company will return calls requiring completion to the TC's facilities, where the TC will provision for applicable call completion services unless the parties mutually agree to an alternative. (C)

The Telephone Company will bill the TC for each 0- operator handled call, either on an occurrence basis or an operator work second basis, as set forth in Section 5.8.8(A) following. At the TC's request, the Telephone Company will provide TC specific branding, which will be billed per occurrence in addition to the charges mentioned above. (C)

Issued in compliance with Order of the Public Service Commission, dated October 15, 2002 in Case Nos. 98-C-1357, 00-C-0127, and 00-C-1945.

See PREFACE Item 26 for Statement of Company's Reservation of Objections.

Issued: November 14, 2002

Effective: November 15, 2002

By Sandra Olorio Thorn, General Counsel
1095 Avenue of the Americas, New York, N.Y. 10036

NETWORK ELEMENTS5 Unbundled Network Elements (Cont'd)5 8 Directory Assistance and Operator Services (Cont'd)5 8 8 Rates and Charges (Cont'd)(D) Additional Directory Assistance ServicesATLAS View of Listing Service

Per Electronic Listing Retrieval Charge

- Per transaction

Rates

\$0.204

(T)(M)

(M)

(M)

(M)

(C)

(E) Additional Operator Services Features

(T)

(1) Real Time RatingIncremental Rates¹

Operator-handled (OPH) Sent Paid, Pass-through.

Calling Card, per work second

\$0.000116

OPH Sent Paid, per request

0.003467

OPH Calling Card, per request

0.004277

OPH Collect and Bill to Third

Number, per request

0.009784

Busy Line Verification (BLV), per work second

0.000116

BLV, per request

0.005416

Busy Line Verification/Interrupt (BLV/I),

per work second

0.000116

(D)

* These rates are incremental to any rate that the TC is currently paying the Telephone Company for Operator Services elements under separate contractual agreement.